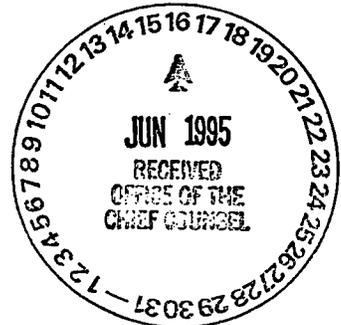


→ Tom Howard
B 72

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FILED
ENDORSED
95 JUN 16 AM 10:16
ELECTRONIC PROCESS #1

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8 SAN JOAQUIN TRIBUTARIES ASSOCIATION



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13 (Counsel continued on next page)

14
15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF SACRAMENTO

17 SAN JOAQUIN TRIBUTARIES ASSN.,)
an unincorporated association;)
18 MODESTO IRRIGATION DISTRICT, a)
public agency of the State of)
19 California; MERCED IRRIGATION)
DISTRICT, a public agency of)
20 the State of California;)
TURLOCK IRRIGATION DISTRICT, a)
21 public agency of the State of)
California; OAKDALE IRRIGATION)
22 DISTRICT, a public agency of)
the State of California; SOUTH)
23 SAN JOAQUIN IRRIGATION)
DISTRICT, a public agency of)
24 the State of California,)
25 Petitioners and Plaintiffs,)
vs.)
26 STATE WATER RESOURCES CONTROL)
BOARD, a public agency of the)
27 State of California,)
28 Respondent and Defendant.)

CASE NO: 95CS01432
PETITION FOR WRIT OF
MANDAMUS, COMPLAINT FOR
DECLARATORY RELIEF AND
INJUNCTION
(C.C.P. §§ 526, 1060,
1085, 1094.5, Public
Resources Code §
21080.5(g))

1 (continuation of Counsel)

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15 SOUTH SAN JOAQUIN IRRIGATION DISTRICT

16

17 Petitioners, SAN JOAQUIN TRIBUTARIES ASSOCIATION (the
18 "ASSOCIATION"), MODESTO IRRIGATION DISTRICT, MERCED IRRIGATION
19 DISTRICT, TURLOCK IRRIGATION DISTRICT, OAKDALE IRRIGATION
20 DISTRICT, and SOUTH SAN JOAQUIN IRRIGATION DISTRICT
21 (collectively, "DISTRICTS") come now and as and for causes of
22 action against Respondent, STATE WATER RESOURCES CONTROL BOARD
23 (the "BOARD"), allege as follows:

24 ALLEGATIONS COMMON TO EACH CAUSE OF ACTION

25 Nature of the Case

26 1. Petitioners, which are public agencies owning senior
27 water rights on the San Joaquin River tributaries, are
28 challenging a decision of the Board taken on May 22, 1995

1 adopting the "Water Quality Control Plan for the San Francisco
2 Bay/Sacramento-San Joaquin Delta Estuary" (the "Plan") which
3 establishes, *inter alia*, minimum flow requirements for the San
4 Joaquin River. Petitioners allege that, in the guise of setting
5 flow requirements for the protection of San Joaquin River fall-
6 run Chinook Salmon ("Salmon") and Delta Smelt ("Smelt"), the
7 Board effected a water transfer to junior rights-holders, by
8 expressly allowing the State and Federal Water Projects (the
9 "Export Projects") to pump from the San Francisco Bay/Sacramento-
10 San Joaquin Delta Estuary ("Bay-Delta") and to export 100% of the
11 flow which the upstream water rights holders must produce in the
12 San Joaquin River at Vernalis.

13 2. As is set forth at length below, Petitioners allege that
14 the Plan is invalid for the following reasons:

15 a. As a flow standard for the benefit of Salmon and
16 Smelt, the flow standard at Vernalis is arbitrary, capricious and
17 without support in the administrative record; in fact, because
18 the plan allows 100% of the San Joaquin flows to be pumped by the
19 Export Projects, and because a simple barrier is omitted, thus
20 directing the San Joaquin River flows and fish directly to the
21 Exporter's pumps, the Plan is deleterious to outmigrating Salmon
22 Smolt;

23 b. As an adjudicative proceeding establishing
24 entitlement of the Export Projects to 100% of the San Joaquin's
25 mandated flow, the standard is without substantial evidence, in
26 that the evidence is uncontradicted that the water users on the
27 San Joaquin tributaries have more senior water rights than the
28 Export Projects.

1 c. Provision for the Export Projects to take and
2 export from the Bay-Delta 100% of the San Joaquin's flows is
3 beyond the Board's standard-setting authority under the Water
4 Code.

5 d. The Board failed, in dereliction of the Board's own
6 regulations and its certification under the California
7 Environmental Quality Act (CEQA) to adopt a feasible mitigation
8 measure which would have substantially lessened the required
9 flows.

10 e. The adoption of the provision for the Export
11 Projects to take and export from the Bay-Delta 100% of the San
12 Joaquin's flows was procedurally improper, as it was beyond the
13 subject matter of the Board's required notice of the proceedings,
14 and the Board was therefore powerless to adopt such provisions.

15 3. The reason that the Board's action did not fit within
16 the procedural requirements of administrative law, the
17 substantive requirements of the Water Code, or the evidence in
18 the Board's record is that, as the record reflects, the Board
19 simply adopted wholesale the results of private negotiations
20 between the Export Projects, and certain agencies, other water
21 users and environmental interest groups. Agreement between those
22 parties was reached on December 15, 1994. Petitioners, however,
23 were excluded from those private negotiations. Those other
24 parties reached their own compromise using the Petitioners'
25 water, and the Board simply adopted their agreement.

26 4. The Board responds to these problems with the assurance
27 that the flow requirement for the San Joaquin River, and the
28 allowance for the Export Projects to export 100% of those flows,

1 does not directly impose any obligations on the Petitioners; that
2 those obligations will be imposed at forthcoming "water rights"
3 hearings which the Board is commencing, whose purpose is to fix
4 obligations among the water users of the San Joaquin River to
5 meet the standards. This response does not meet the objections
6 for several reasons:

7 a. It simply fails to address the facts that the flow
8 standards and water reallocations were (1) beyond the subject
9 matter of the hearing notice; (2) beyond the Board's standard-
10 setting authority; and (3) without scientific evidence in the
11 administrative record;

12 b. At the water rights proceedings, the standards, and
13 the right of the Export Projects to export 100% of the San
14 Joaquin flows, will be the basis for the contribution
15 allocations;

16 c. The flow standard for the San Joaquin is set at a
17 level that requires the taking of Petitioners' water rights
18 regardless of the outcome of those hearings.

19 d. Because the flow standard was set at an amount
20 required to push Smelt away from the Export Projects' pumps, they
21 assume the level of pumping which they allow; if the pumps were
22 not operating, or were operating at a lower level, these flows
23 would be unnecessary.

24 e. The absence of the Old River Barrier, coupled with
25 the mandated high flows to the Export Projects' pumps and the
26 export pumping of 100% of the San Joaquin flows, fails to
27 protect, indeed harms, the outmigrating San Joaquin Salmon
28 smolts, as they are propelled toward destruction at the Export

1 Projects' pumps.

2

Parties

3 5. The DISTRICTS are public agencies organized and existing
4 pursuant to the Irrigation District Law, California Water Code
5 section 20500 et seq. Pursuant to Water Code § 22650, each
6 Petitioner "may commence and maintain any actions and proceedings
7 to carry out its purposes or protect its interests." Pursuant to
8 Water Code section 22654, each DISTRICT may commence and maintain
9 "any action or proceeding involving or affecting the ownership or
10 use of waters or water rights within the district used or useful
11 for any purpose of the district or of benefit to any land." The
12 DISTRICTS have senior water rights to waters tributary to or on
13 the San Joaquin River, which water must make up the flows
14 mandated by the Plan. The DISTRICTS' uses of water are within
15 protected "areas of origin" within the meaning of Water Code
16 sections 10505, 11460 and 12231. The DISTRICTS are directly
17 affected by the Plan, in that by the terms of the Plan junior
18 rights-holders may export the entirety of the flows of the San
19 Joaquin River which are mandated by the Plan, and because the
20 adoption of the Plan subjects the DISTRICTS to subsequent water
21 rights proceedings before the Board. The DISTRICTS appeared and
22 presented the positions presented herein to the Board orally and
23 in writing. The DISTRICTS are therefore beneficially interested
24 parties within the meaning of Code of Civil Procedure section
25 1060 and 1086.

26 6. The ASSOCIATION is an unincorporated association whose
27 members are the DISTRICTS. The Association appeared with the
28 DISTRICTS at the hearings and in their presentations before the

1 BOARD, raising the points set forth herein with them and on their
2 behalf.

3 7. The Board is a public agency of the State of California,
4 organized and existing pursuant to Water Code sections 174 et
5 seq., 13100 and pursuant to law. The Board administers, *inter*
6 *alia*, laws, under which permits and licenses to appropriate water
7 are issued, denied, revoked or modified (Water Code § 1200 et
8 seq.) The Board is also responsible for adopting Water Quality
9 Control Plans pursuant to Water Code section 13170.

10 Exhaustion of Remedies

11 8. Petitioners have exhausted their administrative remedies
12 in that they have each appeared before the Board at its hearings
13 leading to its decision adopting the Plan, and thereat raised
14 before the Board each and every point now presented to this Court
15 and submitted evidence pertinent thereto.

16 Absence of Remedy at Law

17 9. Petitioners have no plain, speedy or adequate remedy in
18 the ordinary course of law within the meaning of Code of Civil
19 Procedure section 1086, in that the Board's decision is not
20 otherwise reviewable, and unless this Court issues its writ,
21 Petitioners will be required, at great expense and time
22 commitment, to defend the Board's next round of proceedings
23 wherein the Board will reallocate water rights as required to
24 meet the Board's flow standard at Vernalis.

25 FIRST CAUSE OF ACTION

26 (Mandamus, C.C.P. § 1085, Absence of Required Evidence)

27 10. Petitioners incorporate by reference as though set
28 forth at length at this place the allegations of paragraphs 1

1 through 9, inclusive.

2 11. The water flows of the San Joaquin River mandated by
3 the plan are arbitrary, capricious and without evidentiary
4 support in the Board's administrative record in that, although
5 those flows were purported by the Plan to be based on flow
6 requirements for the propagation of Smelt and Salmon:

7 a. As to Salmon, no evidence of the need for these
8 flows appears in the administrative record;

9 b. As to Smelt, the record circularly states that the
10 San Joaquin River flows are required to propel such Smelt away
11 from the Export Projects' pumps when those pumps are exporting
12 those selfsame flows. However, there is no basis in the record or
13 in law for the obligation of the rightsholders on the San Joaquin
14 River to supply water to mitigate the effects of exporting water
15 from the Delta; and there is no basis in the record to conclude
16 that the Export Projects, as junior rightsholders outside of any
17 "Area of Origin," have any right to pump 100% of the San Joaquin
18 River flow.

19 SECOND CAUSE OF ACTION

20 (Mandamus, C.C.P. §§ 1085, 1094.5, Absence of Required Evidence)

21 12. Petitioners incorporate by reference as though set
22 forth at length at this place the allegations of paragraphs 1
23 through 11, inclusive.

24 13. The flows of the San Joaquin River required by the Plan
25 are based on those flows required to push Smelt away from the
26 Export Projects' pumps when those pumps are exporting those
27 selfsame flows. The flow prescription would be unnecessary absent
28 the operation of the Export Projects' pumps. In calculating the

1 required flow volume of the San Joaquin River, the Plan
2 necessarily prescribes the volume of water extracted by the
3 Export Projects' pumps.

4 14. No evidence in the record justifies the assumption that
5 the Export Projects have the right to extract the flow of water
6 which the Plan assumes, given the senior rights of the San
7 Joaquin rightsholders and the "Area of Origin" laws.

8 THIRD CAUSE OF ACTION

9 (Mandamus, C.C.P. §§ 1085, 1094.5, Absence of Proper Notice)

10 15. Petitioners incorporate by reference as though set
11 forth at length at this place the allegations of paragraphs 1
12 through 14, inclusive.

13 16. The Board provided no notice that the subject of its
14 hearing on the Plan would include the volume of flow which would
15 be allowed to be pumped by the Export Projects. Indeed, the Board
16 gave notice that all water rights would be deferred to a later
17 hearing and that the hearing on the Plan would be concerned with
18 water quality standards only.

19 17. Despite this lack of notice, the Plan's flow
20 prescription would be unnecessary absent the operation of the
21 Export Projects' pumps, and in calculating the required flow
22 volume of the San Joaquin River, the Plan therefore necessarily
23 prescribes the volume of water to be extracted by the Export
24 Projects' pumps.

25 18. Regardless of whether a proceeding is labeled as quasi-
26 adjudicatory or quasi-legislative, prescriptions of statute and
27 due process require that adequate notice of the subject matter of
28 the hearing be provided.

1 23. Petitioners incorporate by reference as though set
2 forth at length at this place the allegations of paragraphs 1
3 through 22, inclusive.

4 24. When the Export Projects' facilities were first
5 authorized, a major issue was whether those projects would export
6 waters needed for the use and development of areas of origin of
7 the water.

8 25. To respond to this issue, the Legislature provided
9 assurances to the areas of origin, including the enactment of
10 Water Code sections 1215-22, 10505, 11460, and 12200-12227. For
11 example, Water Code section 11460 requires that the state project
12 shall not, in its "construction or operation," deprive areas of
13 origin of waters reasonably needed to adequately supply their
14 beneficial needs, and section 10505 provides that no priority
15 shall be granted to the State Water Project that will "deprive
16 the county in which the water covered by the application
17 originates of any such water necessary for the development of the
18 county." Water Code section 12330 provides in pertinent part that
19 the "Legislature hereby finds and declares that a serious problem
20 of water quality exists in the San Joaquin River and the Merced
21 River and the junction of the San Joaquin River with the Middle
22 River . . ." Water Code section 12231 declares that it is state
23 policy that no "public or private agency or the State or the
24 United States should divert water from the San Joaquin River and
25 its tributaries to which users along the portion of the San
26 Joaquin River described in Section 12230 are entitled."

27 26. Despite these areas of origin laws, the State Board, in
28 the Plan, granted a de facto water right to the Export Projects,

1 by allowing the Export Projects certain flows, and requiring the
2 rightsholders to the San Joaquin River to provide those flows. In
3 making this prescription, the State Board failed to consider, let
4 alone determine, whether the water thus diverted is necessary to
5 the present uses of the areas of origin, let alone their future
6 development.

7 27. Further, the Plan provides no protection for the portion
8 of the San Joaquin River between the Merced River and Vernalis;
9 and because the rights of the Export Projects to San Joaquin
10 River water are less than the flows required from the San Joaquin
11 River in the Plan, the Plan requires flows to which the
12 petitioners are entitled. Finally, and as described in the Sixth
13 Cause of Action herein, because the Plan allows the entire flow
14 of the San Joaquin River to be diverted directly to the Export
15 Projects' pumps, the Plan is clearly detrimental to the fish and
16 wildlife resources of the San Joaquin River, a fact not
17 recognized by the Board in its findings, and the Plan is thus
18 arbitrary, capricious and without justification in the record.

19 SIXTH CAUSE OF ACTION

20 (Violation of CEQA and 23 Cal. Code Regs. § 3780)

21 28. Petitioners incorporate by reference as though set
22 forth at length at this place the allegations of paragraphs 1
23 through 26, inclusive.

24 29. The Board has been certified by the Secretary of
25 Resources as meeting the requirements of Public Resources Code
26 section 21080.5 in its "Water Quality Control (Basin)/208
27 Planning Program." 23 Cal. Code Regs. § 3782. Under that
28 certification, the Board complies with CEQA requirements in its

1 basin plan process if it, *inter alia*, includes in its basin plans
2 "mitigation measures to minimize any significant adverse
3 environmental impact." Public Resources Code § 21080.5(d)(3)(i).
4 Likewise, the Board's compliance regulations under CEQA provide
5 in pertinent part: "The board shall not approve a proposed
6 activity if there are feasible mitigation measures available
7 which would substantially lessen any significant adverse impact
8 which the proposed activity may have under the environment." Cal.
9 Code of Regs. § 3780.

10 30. One of the measures which had operated with success to
11 assist Salmon smolts in avoiding destruction by the export pumps
12 has been the erecting of a temporary barrier to the Old River
13 Channel leading to the pumps. This barrier directs the fish
14 migration northward from the pumps. Irrespective of any mandated
15 change in the San Joaquin River flows, this one measure, during
16 periods of low flow, would increase the San Joaquin River Salmon
17 population by a factor of three to fourfold. With the high flows
18 specified in the Plan, the fish whose protection is sought are
19 instead propelled with greater force toward the Export Projects'
20 pumps. The benefits of this Old River Barrier were fully
21 presented to the Board. There was no opposition to the Barrier.
22 To the contrary, the December 15, 1994 agreement between the
23 federal agencies, the environmental groups and the Export
24 Projects expressly endorsed the creation of a permanent barrier
25 and called for its mandatory construction.

26 31. The State Board, however, and despite the call for the
27 Barrier, refused to utilize it as a mitigation measure, calling
28 instead for its "further study." Because the barrier had in fact

1 been used in the past, and its benefits were universally known,
2 this deferral of consideration of a measure which could increase
3 smolt survival by a factor of three to four regardless of
4 mandated flows was arbitrary, capricious and without
5 justification in the record.

6 32. This action was timely filed under Public Resources
7 Code section 21080.5(g), which provides in pertinent part:
8 Any action or proceeding to attack, review, set aside,
9 void or annul a determination or decision of a state .
10 . . board . . . approving or adopting a proposed
11 activity under a regulatory program which has been
12 certified pursuant to this section on the basis that
13 the plan or other written documentation prepared
14 pursuant to paragraph (3) of subdivision (d) does not
15 comply with the provisions of this section shall be
16 commenced no later than 30 days from the date of the
17 filing of notice of the approval or adoption of the
18 activity.

19 Said notice was received for filing on May 22, 1995.

20 33. Mitigation measures must, under CEQA, be specified as
21 part of the CEQA process. It is not an answer under CEQA that the
22 mitigation measures will be "studied" on some undefined future
23 day. Because the Board did not include in its Plan "mitigation
24 measures to minimize any significant adverse environmental
25 impact" (Public Resources Code § 21080.5(d)(3)(i)) viz., the Old
26 River Barrier as a mitigation to the San Joaquin River flow
27 requirements, the Plan is invalid.

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VERIFICATION

(CCP § 446)

I, Allen Short, declare:

I am an officer of the San Joaquin Tributaries Association (the "Association"). The Association is a Plaintiff and Petitioner in the foregoing action, and I have been authorized to make this verification on its behalf.

I have read the foregoing Petition for Writ of Mandamus, Complaint for Declaratory Relief and Injunction, and know the contents thereof. The same is true of my own knowledge.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 15 day of June, 1995, at Modesto, Stanislaus County, California.

Allen Short

Allen Short

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16 MERCED IRRIGATION DISTRICT

13 (Counsel continued on next page)

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF SACRAMENTO

17 SAN JOAQUIN TRIBUTARIES ASSN.,)
18 an unincorporated association;)
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22 DISTRICT, a public agency of)
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24 TURLOCK IRRIGATION DISTRICT, a)
25 public agency of the State of)
26 California; OAKDALE IRRIGATION)
27 DISTRICT, a public agency of)
28 the State of California;)
29 Petitioners and Plaintiffs,)
30 vs.)
31 STATE WATER RESOURCES CONTROL)
32 BOARD, a public agency of the)
33 State of California,)
34 Respondent and Defendant.)

CASE NO: 95CS01432
REQUEST FOR PREPARATION OF RECORD

ENGROSSED
JUN 16 1995
By B. WILSON, Deputy



1 (continuation of Counsel)

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14 Attorneys for Petitioner and Plaintiff

15 SOUTH SAN JOAQUIN IRRIGATION DISTRICT

16

17 TO RESPONDENT AND DEFENDANT, STATE WATER RESOURCES CONTROL

18 BOARD:

19 Petitioners and Plaintiffs, SAN JOAQUIN TRIBUTARIES ASSOCIATION,

20 MODESTO IRRIGATION DISTRICT, MERCED IRRIGATION DISTRICT, TURLOCK

21 IRRIGATION DISTRICT, OAKDALE IRRIGATION DISTRICT, and SOUTH SAN

22 JOAQUIN IRRIGATION DISTRICT (collectively, "DISTRICTS") request

23 as follows:

24 That you prepare the record of proceedings relating to

25 the adoption of the "Water Quality Control Plan for

26 the San Francisco Bay/Sacramento-San Joaquin Delta

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Estuary" which you adopted on May 22, 1995.

Date: June 13, 1995

GIBSON, DUNN & CRUTCHER
JOEL S. MOSKOWITZ

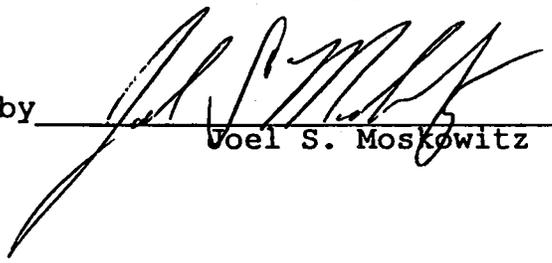
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Attorneys for Petitioner and Plaintiff
South San Joaquin Irrigation District

by 
Joel S. Moskowitz

FILED
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ORDER ASSIGNING PETITION FOR WRIT OF MANDATE TO ONE JUDGE FOR ALL PURPOSES
PROCL. PROCESS #1

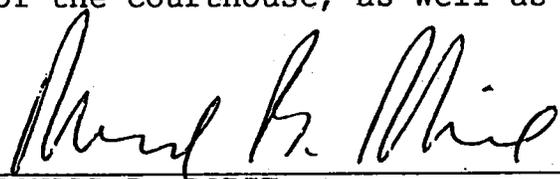
CASE NUMBER: 95CS01432

This is to advise you that the Honorable Ronald B. Robie, Presiding Judge of the Sacramento Superior and Municipal Courts, hereby assigns this matter to the Honorable James T. Ford, of Department 8 for all purposes.

All subsequent documents in this cause shall be filed with the clerk of Department 8 located on the fourth floor of the courthouse. These documents include, but are not limited to: Answers, Memoranda of Points and Authorities, Administrative Records, Demurrers, and any prehearing motions. For those documents requiring the payment of a fee (i.e. Answers, Motions, Demurrers), the fee shall be paid to the cashier located in Room 101 of the courthouse before filing in Department 8.

If you have any questions, please refer to the Sacramento Superior Court Procedures for Prosecuting Petitions for Writ of Mandate available in Room 101 of the courthouse, as well as in Departments 8, 9, and 22.

Dated: 6-16-95


RONALD B. ROBIE
Presiding Judge

A COPY OF THIS ORDER SHALL BE SERVED ON THE RESPONDENT BY THE PETITIONER.



jks/c:/writfor/022195

Original-File Yellow-Petitioner Pink-Department Clerk